

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**Alexandria Division**

RITLABS, S.R.L.,

Case No.: 1:12CV215

Plaintiff/Counter-Defendant,

v.

Hon. Ivan D. Davis

RITLABS, INC., and SERGHEI  
DEMCENKO,

Defendants/Counter-Claimants.

**MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO STRIKE**

On June 28, 2012 Ritlabs, SRL ("SRL") filed a motion for summary judgment as to its claims as Plaintiff in this case, and filed a separate motion for summary judgement defending Ritlabs, Inc. ("Inc") and Serghei Demcenko's ("Demcenko") counterclaims. SRL believes that both of these filings are permitted under Local Rule 56(c) because of SRL's dual roles as a party Plaintiff on its own claims and a party Counterdefendant on separate counterclaims prosecuted by Defendants. SRL makes this distinction, and accordingly filed separate motions, in order to clarify the separate nature of Plaintiff's claims and Defendants' counterclaims, and to provide the Court an opportunity to efficiently decide the entire case at hand on summary judgment.

The number and complexity of Plaintiff and Defendants' competing claims in this matter necessitates that a distinction be made between SRL's stances as Plaintiff and Defendant. SRL seeks relief on eight separate claims, and Defendants have made seven separate counterclaims against SRL on unrelated grounds. Plaintiffs base their claims primarily on a scheme perpetrated by Demcenko and Inc to abscond with the intellectual and commercial property of SRL and

essentially pose as SRL for the purposes of entering into contracts and unjustly reaping financial gains at the expense of SRL.<sup>1</sup> Defendants, on the other hand, base their claims against SRL primarily on a purported licensing agreement that was allegedly entered into between SRL and Inc, with Demcenko entering into the agreement on behalf of both SRL and Inc. ECF #27. Defendants have also amended their counterclaims to put forward an additional frivolous claim for conversion against SRL which is patently without merit and directly contradicted by all of the available evidence. ECF # 41.

In its separate motions for summary judgment, SRL presents a great deal of evidence to both support its claims and contradict Defendants' counterclaims. It would have been impracticable for Ritlabs, SRL to coherently address the entirety of the case at hand within a single motion for summary judgment. In order to give the Court an opportunity to dispose of the entire case at hand in summary judgment and thus eliminate the need for a lengthy trial on any unaddressed issues, SRL fairly interpreted Local Rule 56(c) to permit the filing of separate motions for summary judgment where those motions were accordingly limited in scope to separately and distinctly address Plaintiff's claims and Defendant's counterclaims.

In their motion to strike, Defendants characterize SRL's motion for summary judgment as to Defendants' counterclaims as a bad-faith attempt to make and end-run around the page limitations imposed by the local rules. It is not. SRL interprets Local Rule 56(c) to allow the filing of its motion for summary judgment as to Defendants' counterclaims where that motion is limited in scope to addressing only Defendants' counterclaims. SRL deemed it necessary to make such a distinction when filing its motions for summary judgment because of the number of

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<sup>1</sup> Plaintiff has already demonstrated to the Court the likelihood of success on several of its claims, when this Court granted SRL a preliminary injunction against Defendants. ECF # 34.

counterclaims asserted by Defendants and the vast amount of evidence in the record contradicting those counterclaims.

Local Rule 56(c) states that a "party shall not file separate motions for summary judgment addressing separate grounds." SRL sits in the position of two parties in the present case, both a claimant and defendant, and only seeks to have its distinct positions represented in this matter through its motions for summary judgment. SRL has concisely stated its arguments for summary judgment in accordance with its separate stances in this litigation, and presented more than adequate evidence to succeed on both its claims and its defenses to Defendants' claims.

Given SRL's good faith interpretation of the local rule and its likelihood of defeating Defendants' claims on summary judgment, it would be an unjust result for Defendants to succeed in their motion to strike on purely procedural grounds, and thus avoid having their baseless counterclaims decided on summary judgment. This result would only serve to allow Defendants' counterclaims to proceed to a futile trial, which would be a waste of resources for both the Court and the parties.

To the extent that this Court deems that SRL has misinterpreted Local Rule 56(c) by filing its motion for summary judgment as to Defendants' counterclaims, SRL requests leave of the Court to file and let stand its motion, in order to avoid an unjust result in this matter. Based on the arguments and evidence presented in its motion for summary judgment as to Defendants' counterclaims, Defendants are almost certainly poised to have their meritless counterclaims disposed of in summary judgment proceedings. Granting the relief requested by Defendants' motion to strike would only serve to needlessly prolong the present litigation, and unduly expend

the resources of this Court and the parties, where the evidence in the record clearly refutes Defendants' counterclaims.

Based on the foregoing, SRL requests that the Court deny Defendants' Motion to Strike, and alternatively request leave of court to file and let stand Plaintiff's Motion for Summary Judgment as to Defendants' Counterclaims.

Respectfully submitted this 4 day of July, 2012.

**RITLABS, S.R.L.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of July, 2012, I electronically filed the foregoing Memorandum in Opposition to Defendants' Motion to Strike with the Clerk of the Court using the CM/ECF System on:

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